

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

SOUTHERN STAR CENTRAL GAS)	
PIPELINE, INC.,)	
)	
Plaintiff,)	Case No. 08-5048-CV-SW-WAK
)	
vs.)	
)	
COLLINS & HERMANN, INC., and)	JURY DEMAND
ROBERT KELLY,)	
)	
Defendants.)	

COMPLAINT

COMES NOW Plaintiff Southern Star Central Gas Pipeline, Inc. ("Plaintiff"), and for its complaint against Defendants Collins & Hermann, Inc. ("Collins & Hermann") and Robert Kelly ("Kelly"), states and alleges as follows:

PARTIES

1. Plaintiff is and at all times mentioned herein was a Delaware corporation with its principal place of business in Owensboro, Kentucky, and licensed to do business in Missouri.

2. Defendant Collins & Hermann is and at all times mentioned herein was a Missouri corporation with its principal place of business in St. Louis, Missouri. Collins & Hermann may be served through its registered agent, Kevin Hermann, 1215 Dunn Road, St. Louis, Missouri 63138.

3. Defendant Kelly is an individual residing in the State of Missouri and at all times mentioned herein was a bonded employee of Collins & Hermann. Defendant Kelly may be served at 105 Cedar Park Drive, Linn, Missouri 65051.

JURISDICTION AND VENUE

4. This matter arises under the laws of the State of Missouri relating to negligence and vicarious liability. This Court has jurisdiction over Plaintiff's claims under 28 U.S.C. § 1332 (A)(1) as the amount in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(A).

FACTUAL BACKGROUND

6. Prior to July 25, 2006, Collins & Hermann contracted with the Missouri Highway Commission to install a steel cable median barrier along the east-west oriented Interstate 44 corridor in the Joplin, Missouri area ("the Contract").

7. Plaintiff at all times mentioned herein was the owner and operator of a 16-inch natural gas pipeline ("Plaintiff's Pipeline") traversing six feet below and perpendicular to Interstate 44 approximately one-quarter mile east of the Range Line Road exit, a/k/a Exit 8B.

8. On or about July 25, 2006, Kelly, in the course and scope of his employment by Collins & Hermann, operated a track-mounted pile driver to install steel posts in the Interstate 44 median near Exit 8B.

9. Approximately 100 feet west of and parallel to the location of Plaintiff's Pipeline as it traversed under Interstate 44 was a three-phase 12,700 volt overhead distribution line owned and operated by Empire District Electric Company ("Empire").

10. At approximately 3:15 p.m. on July 25, 2006, Kelly allowed the extended boom of the pile driver he was operating on Collins & Hermann's behalf to contact two phases of the overhead lines owned by Empire, causing them to fall to the ground, create ground fire, and create arching, one of which caused and/or contributed to cause a gas leak.

11. The downed power lines remained energized for approximately 32 minutes.

12. Approximately 15 minutes after Kelly caused the power lines to fall to the ground, natural gas was observed blowing from a vertical vent pipe in the north right of way of Interstate 44 and attached to Plaintiff's Pipeline, indicating a leak in Plaintiff's Pipeline.

13. Natural gas also was observed blowing from a two-inch diameter hole in the ground in the north right of way of Interstate 44, further indicating a leak in Plaintiff's Pipeline.

14. The incident described above required Plaintiff to shut down operation of the pipeline, causing an extended "outage" of gas service to Plaintiff's downstream customers.

15. On August 7 and 8, 2006, Plaintiff excavated and replaced the pipeline section traversing under Interstate 44.

16. Localized melting of the pipeline was caused and/or contributed to be caused by the negligence and/or fault of Robert Kelly.

17. No other factors or pipe conditions were found in the excavated pipe that could have caused or contributed to the gas leakage that occurred July 25, 2006.

COUNT I
(NEGLIGENCE – ROBERT KELLY)

COMES NOW Plaintiff Southern Star Central Gas Pipeline, Inc. ("Plaintiff"), and for its complaint against Defendant Robert Kelly ("Kelly"), states and alleges as follows:

18. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 17 as if fully set out herein.

19. Kelly owed a duty of care to Plaintiff on or about July 25, 2006 to operate the track-mounted pile driver in a safe and careful manner and to comply with all laws, regulations, and standard industry practices designed for the public safety.

20. On or about July 25, 2006, Kelly breached his duty of care to Plaintiff by carelessly and/or negligently causing the boom on the pile driver he was operating to contact the overhead electrical conductors located near Plaintiff's Pipeline, causing them to fall to the ground.

21. Kelly's negligence caused and/or contributed to cause damage to Plaintiff, including, but not limited to, the costs to excavate and replace the damaged pipeline, lost income caused by the interruption of service to customers, and the cost of third-party damage claims, both known and unknown, against Plaintiff, in a sum in excess of \$100,000.00.

WHEREFORE, Plaintiff Southern Star Central Gas Pipeline, Inc., prays this Court enter judgment against Defendant Robert Kelly, individually, and/or jointly and severally, in such an amount as is fair and reasonable, for costs, and for such other and further relief as the Court may deem just and proper.

COUNT II
(NEGLIGENCE – COLLINS & HERMANN, INC.)

COMES NOW Plaintiff Southern Star Central Gas Pipeline, Inc. ("Plaintiff"), and for its complaint against Defendant Collins & Hermann, Inc. ("Collins & Hermann"), states and alleges as follows:

22. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 21 as if fully set out herein.

23. At all times mentioned herein, Kelly was an employee of Collins & Hermann, acting in the course and scope of that employment, and as such, Collins & Hermann is vicariously liable for Kelly's actions.

24. Collins & Hermann owed a duty of care to Plaintiff to conduct its activities in a safe and careful manner and to comply with all laws, regulations and standard industry

practices designed for the public's safety, in part based upon industry practices and in part based upon its contract with the Missouri Highway Commission.

25. On or about July 25, 2006, Collins & Hermann, by and through its employee, breached its duty of care to Plaintiff by carelessly and/or negligently allowing the boom on a pile driver to contact the overhead electrical conductors located near Plaintiff's Pipeline, causing them to fall to the ground, and/or failing to properly train and/or supervise Robert Kelly and/or failing to properly equip the pile driver to have prevented this type of incident.

26. As a proximate result of Collins & Hermann's negligence, Plaintiff suffered damage including but not limited to the cost to excavate and replace the damaged pipeline, lost income caused by the interruption of service to customers, and the cost of third-party damage claims both known and unknown against Plaintiff, in a sum in excess of \$100,000.00.

WHEREFORE, Plaintiff Southern Star Central Gas Pipeline, Inc, prays this Court enter judgment against Defendant Collins & Hermann, Inc., individually, and/or jointly or severally, in such an amount as is fair and reasonable, for costs, and for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury in the above-captioned cause.

LATHROP & GAGE, L.C.

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